

STATE OF MICHIGAN
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXXX

Petitioner

v

File No. 121482-001

UnitedHealthcare Insurance Company
Respondent

Issued and entered
this 27TH day of October 2011
by R. Kevin Clinton
Commissioner

ORDER

I. BACKGROUND

On May 19, 2011, XXXXX, on behalf of her minor son XXXXX¹ (Petitioner), filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* After a preliminary review of the material submitted, the Commissioner accepted the request on May 26, 2011.

The Commissioner notified UnitedHealthcare Insurance Company (United) of the external review and requested the information it used to make its final adverse determination. United furnished the information on May 20, 2011.

The issue here can be decided by applying the terms of the Petitioner's health care coverage. The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II. FACTUAL BACKGROUND

The Petitioner receives health care benefits as an eligible dependent under a group plan underwritten by United. His benefits are defined in the *UnitedHealthcare Choice Plus* certificate

¹ Born XXXXX.

of coverage and the *Outpatient Prescription Drug Rider*. The Petitioner's coverage with United was effective March 1, 2011.

The Petitioner has a history of gastroesophageal reflux disease (GERD). To control the GERD, the Petitioner's physician prescribed Prevacid SoluTab.

United denied coverage for the Prevacid SoluTab stating it is excluded from coverage because it is not on United's prescription drug list (i.e., formulary). United also states there are equivalent over-the-counter drugs available to treat the Petitioner's condition.

The Petitioner appealed. At the conclusion of United's internal grievance process the Petitioner received a final adverse determination dated May 10, 2011, upholding the denial.

III. ISSUE

Did United correctly deny coverage for the Prevacid SoluTab?

IV. ANALYSIS

Petitioner's Argument

The Petitioner has been taking Prevacid SoluTab 30mg daily since 2009 and wants to continue to have it covered. In her request for external review, the Petitioner's mother wrote:

We are trying to get [the Petitioner's] Prevacid 30mg SoluTab covered.
He has been on this for a couple of years which has controlled his reflux.
If his reflux gets out of control his asthma flares.

The Petitioner supplied medical records from October 28, 2010 to May 19, 2011, to support the diagnosis and treatment of his condition.

Respondent's Argument

United's final adverse determination advised:

We carefully reviewed the documentation submitted, our payment policies and the limitations, exclusions and other terms of your Certificate of Coverage, including any applicable Riders, Amendments, and Notices. We confirmed, however, that Prevacid (lansoprazole) is not eligible for payment as you requested. You are responsible for all costs related to this medication(s).

* * *

Our original determination remains unchanged, and the determination is upheld. Our decision does not reflect any view about the medical appropriateness of this medication(s). Only you and [the Petitioner's] physician can make decisions about [his] medical care.

The Appeals Committee reviewed your appeal. This decision was made based on Outpatient Prescription Drug Rider to your Certificate of Coverage. The Committee's determination is as follows: . . . Uphold request for Prevacid Solutabs as only covered for dependents under the age of five years old.

Commissioner's Review

The Petitioner had been taking Prevacid SoluTab since 2009 and, according to his mother and his physician, has had good results. Nevertheless, United states Prevacid SoluTab is excluded from its drug formulary.² The formulary includes these alternatives to Prevacid SoluTab that would be covered for the Petitioner: Omeprazole, Zegerid, Protonix tablet, pantoprazole tablet, Aciphex, and Dexilant.³

United may limit its coverage to drugs on a formulary. That limitation, however, is not absolute. Michigan law requires health insurers that provide prescription drug coverage to make an exception to a formulary limitation when a nonformulary alternative is a medically necessary and appropriate alternative. Section 3406o of the Insurance Code states:

An insurer that delivers, issues for delivery, or renews in this state an expense-incurred hospital, medical, or surgical policy or certificate that provides coverage for prescription drugs and limits those benefits to drugs included in a formulary shall do all of the following:

- (a) Provide for participation of participating physicians, dentists, and pharmacists in the development of the formulary.
- (b) Disclose to health care providers and upon request to insureds the nature of the formulary restrictions.
- (c) Provide for exceptions from the formulary limitation when a nonformulary alternative is a medically necessary and appropriate alternative. This subdivision does not prevent an insurer from establishing prior authorization requirements or another process for consideration of coverage or higher cost-sharing for nonformulary alternatives. Notice as to whether or not an exception under this subdivision has been granted shall be given by the insurer within 24 hours after receiving all information necessary to determine whether the exception should be granted. [MCL 500.3406o]

² Except for children through age five.

³ United also states there are nonprescription alternatives such as Prilosec OTC, Prevacid OTC, and Zegerid OTC.

United recognizes that there are exceptions to formulary limitations. It made an exception for Xopenex Nebules, an asthma medication requested by the Petitioner that is also excluded from the formulary. United stated in the final adverse determination that it was “Approving Xopenex as several alternatives have been trialed.”

United submitted information from its Clinical Pharmacy Programs (“Excluded Drug criteria”) that indicates that Prevacid SoluTab may be covered if there is a history of failure or intolerance in the use of at least two of the formulary alternatives to Prevacid SoluTab. However, the record does not establish that there has been such a history or failure or intolerance to any of the formulary alternatives to Prevacid SoluTab.

While there is a note from the Petitioner’s doctor’s office dated March 22, 2011, that indicates the Petitioner was “trialing” Prilosec at that time, no results were reported. There is also a letter from the Petitioner’s doctor dated May 19, 2011, that indicates the Petitioner was “currently trialing” Omeprazole but having “breakthrough symptoms.” However, the letter was written after the conclusion of the grievance process and the information was too late to be considered by United.

The Commissioner concludes and finds that the record does not show at this time that the Petitioner has tried and failed in the use of the formulary’s alternatives to Prevacid SoluTab; he has not shown that a nonformulary alternative (i.e., Prevacid SoluTab) is medically necessary and appropriate for his condition.

V. ORDER

The Commissioner upholds UnitedHealthcare Insurance Company’s final adverse determination of May 10, 2011. United is not required to cover Prevacid SoluTab for the Petitioner at this time.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.